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EXAMINER	
CUMBERLEDGE, JERRY L	
ART UNIT	PAPER NUMBER
3733	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,342	WEINER ET AL.	
	Examiner	Art Unit	
	JERRY CUMBERLEDGE	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-38* is/are pending in the application.

4a) Of the above claim(s) *8-10,14,16,35 and 38* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,11-13,15,17-32,34,36 and 37* is/are rejected.

7)☒ Claim(s) *33* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 11-13,17, 28-31 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asnis et al. (US Pat. 4,450,835) in view of Evans (US Pat. 5,122,133).

Asnis et al. disclose a method of repairing a fractured bone comprising: advancing a device through a bone fragment (Fig. 13), the device having an elongated shaft (Fig. 13, ref. 151) extending longitudinally about a shaft axis, the device comprising: a bone exterior section (Fig. 13, ref. 132) extending longitudinally about the shaft axis and making up at least one third of a total length of the device (Fig. 13); and a bone penetration section (Fig. 13) extending distally from the bone exterior section (Fig. 13), the bone penetration section comprising: a non-engaging fragment section (Fig. 13, ref. 51) extending longitudinally about the shaft axis (Fig. 13); and a bone anchor section (Fig. 13, distal end) extending longitudinally about the shaft axis (Fig. 13) and located distally to the non-engaging fragment section (Fig. 13), the bone anchor section having threads for engagement with the anchor bone (Fig. 13), with a major diameter of the threads being greater than a shaft diameter of the non-engaging fragment section (Fig. 13); and a compression engagement (Fig. 13, ref. 52) on a distal end of the bone

exterior section, the compression engagement providing a shoulder (Fig. 13, ref. 52) extending at a substantial angle to the shaft axis (Fig. 13, ref. 52)for substantial contact with an exterior surface of the bone fragment (Fig. 13); and screwing the device such that the bone anchor section advances into an anchor bone with the fragment section in the bone fragment (Fig. 13) and with the bone exterior section extending outside the bone (Fig. 13) and with the compression engagement in contact with an exterior surface of the bone fragment (Fig. 13) to provide a compressive force on the bone fragment toward the anchor bone (Fig. 13)(column 8, lines 4-8), thereby connecting the bone fragment to the anchor bone for a healing duration and extending out of the bone during the healing duration (Fig. 13). The bone exterior section is longer than the bone anchor section (Fig. 13). The shaft of the non-engaging fragment section is non-threaded (Fig. 13). The threads on the bone anchor section are self-tapping distally for insertion (Fig. 13). The threads on the bone anchor section are self-tapping proximally for removal (Fig. 13). The bone anchor section ends in a distal drill tip (Fig. 13) adapted for insertion in bone without pre-drilling.

Asnis et al. disclose a method of repairing a fractured bone, comprising: advancing a threaded compression device through a bone fragment (Fig. 13), the threaded compression device comprising: a shaft (Fig. 13) running longitudinally from a proximal end to a distal end about a shaft axis (Fig. 13), the shaft comprising: an anchor section (Fig. 13, distal end of the device) extending longitudinally about the shaft axis on the distal end of the shaft (Fig. 13), a non-engaging fragment section (Fig. 13, ref. 51) extending longitudinally about the shaft axis proximal to the anchor section (Fig. 13);

and an exterior section (Fig. 13, ref. 132) extending longitudinally about the shaft axis proximal to the non-engaging fragment section (Fig. 13), the exterior section having a length which makes up at least one third of the length of the shaft (Fig. 13); and screwing the threaded compression device such that the bone anchor section advances into an anchor bone with the fragment section in the bone fragment and with the exterior section extending outside the bone (Fig. 13) thereby connecting the bone fragment to an anchor bone for a healing duration and extending out of the bone (Fig. 13) with the compression engagement in contact with the exterior surface of the bone fragment during the healing duration (Fig. 13)(column 8, lines 4-8).

Asnis et al. disclose a method of repairing a fractured bone, comprising: advancing a threaded compression device through a bone fragment (Fig. 13), the threaded compression device comprising: a shaft running from a proximal end to a distal end about a shaft axis (Fig. 13), the shaft comprising: a distal drill tip for forward insertion (Fig. 13, distalmost portion of device); an anchor section on the distal end of the shaft next to the distal drill tip (Fig 13, distal threaded section), the anchor section having threads with an anchor thread pitch (Fig. 13); and a proximal drill tip for reverse insertion (Fig. 13, proximal end of the device); and a compression shoulder (Fig. 13, ref. 52), the compression shoulder providing a contact surface which extends at an angle to the shaft axis (Fig. 13) and screwing the threaded compression device such that the anchor section advances into an anchor bone with the fragment section in the bone fragment and with the compression shoulder contacting an exterior surface of the bone (Fig. 13), thereby connecting the bone fragment to the anchor bone with the

compression engagement in contact with the exterior surface of the bone for a healing duration (Fig. 13).

Asnis et al. disclose a method of repairing a fractured bone, comprising: advancing a reverse-taper threaded compression device through a bone fragment (Fig. 13), the compression device comprising: an elongated shaft (Fig. 13, ref. 51) running from a proximal end to a distal end about a shaft axis (Fig. 13), the shaft comprising: an anchor section on the distal end of the shaft (Fig. 13, distal portion of the device), the anchor section having external threads (Fig. 13) for engagement with the anchor substrate with an anchor major diameter and an anchor minor diameter (Fig. 13); and a fragment exterior section proximal to the anchor section (Fig. 13, proximal portion of the device), and a compression engagement (Fig. 13, ref. 52), the compression engagement providing a contact surface which extends at an angle to the shaft axis (Fig. 13), and screwing the threaded compression device such that the anchor section advances into an anchor bone with the fragment section in the bone fragment (Fig. 13) and locating the compression shoulder in contact with an exterior surface of the bone (Fig. 13), thereby placing a compression force on the bone fragment against the anchor bone (column 8, lines 4-8). The threads on the anchor section are self-tapping distally for insertion (Fig. 13). The threads on the anchor section are self-tapping proximally for removal (Fig. 13).

Asnis et al. disclose a method of repairing a fractured bone, comprising: screwing a device through a bone fragment (Fig. 13), the device comprising: an elongated shaft (Fig. 13, ref. 51) having a bone penetration section (Fig. 13, distal portion of device)

extending distally from a bone exterior section (Fig. 13, proximal portion of the device, closer to ref. 52) about a shaft axis, the bone penetration section being shorter than the bone exterior section (Fig. 13), the bone penetration section including a fragment section (Fig. 13, small portion of the device near the distal threaded section) and a bone anchor section (Fig. 13, threaded portion of the device) located distally to the fragment section (Fig. 13), the bone anchor section having threads with a major diameter of the threads being greater than a diameter of the fragment section *(Fig. 13); and a compression engagement (Fig. 13, ref. 52) on a distal end of the bone exterior section (Fig. 13), the compression engagement providing a shoulder extending at a substantial angle to the shaft axis (Fig. 13); and further screwing the device such that the bone anchor section advances into an anchor bone with the fragment section in the bone fragment and with the bone exterior section extending outside the bone with a length longer than the bone penetration section (Fig. 13), with the compression engagement in contact with an exterior surface of the bone fragment to provide a compressive force on the bone fragment toward the anchor bone (Fig. 13). Regarding the lengths of the sections, it is noted that the bone penetration section can be considered to comprise the threaded section of the device (i.e. the bone anchor section, as is found in the claim) and a very small portion of the device immediately adjacent to the threaded portion), and thus the length of the bone exterior section is longer than the defined bone penetration section. The method further comprising: with the bone anchor section advanced into the bone fragment but prior to the act of further screwing the device into the anchor bone, manipulating the bone exterior section to reposition or bias the bone

fragment relative to the anchor bone, since the bone will be repositioned, at least slightly, as the surgery is performed. The method further comprising: after the manipulating act, holding the bone exterior section in a desired alignment during the further screwing act (Fig. 13). After the further screwing act: the fragment section extends through the bone fragment without threaded engagement with the bone fragment; and the threads of the bone anchor section are in engagement with the anchor bone; and the compression engagement is in substantial contact with an exterior surface of the bone fragment to bias the bone fragment toward the anchor bone. (Fig. 13). The method further comprising: monitoring torque applied during the further screwing act, since the surgeon will be controlling the torque he or she will be monitoring it.

Asnis et al. disclose a method of using a reverse-taper threaded compression device for placing a compression force on a fragment against an anchor substrate (Fig. 13), the method comprising: advancing an anchor section (Fig. 13, distal section of device) disposed on a distal end of a shaft of the compression device into the anchor substrate (Fig. 13), such that external threads on the anchor section (Fig. 13, threaded portion of device) engage the anchor substrate (Fig. 13); such that the compression engagement makes contact with an exterior surface of the fragment to bias the fragment toward the anchor substrate (Fig. 13).

Asnis et al. disclose the claimed invention except for the shoulder being wider than the major diameter of the threads of the bone anchor section. Asnis et al. disclose

that the shoulder is used to provide a compressive force between two bone fragments (column 8, lines 4-8).

Evans discloses a device that is used in repairing a fractured bone (Fig. 2) that comprises a shoulder (Fig. 12, ref. 56) that is wider than the diameter of threads on a bone anchor section (Fig. 12, lower threaded portion). The shoulder is used to abut the bone and provide a compression load across a fracture (Fig. 2)(abstract).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the shoulder of Asnis et al. with a shoulder as taught by Evans, in order to achieve the predictable result of providing a shoulder to create and compressive load across a fracture.

Ansis et al. in view of Evans disclose the claimed invention except for the exterior section being more than 45% of a total length of the device. It would have been an obvious matter of design choice to have constructed the device of Ansis et al. in view of Evans with the exterior section being more than 45% of the length of the device, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Claims 4-6, 18, 21 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asnis et al. (US Pat. 4,450,835) in view of Evans (Pat. 5,122,133) in view of von Hoffmann et al. (US Pat. 6,511,481 B2).

Asnis et al. in view of Evans disclose the claimed invention except for the compression engagement being provided by a nut rotatably supported on the threads of the bone exterior section; the bone exterior section has external threads which mate with internal threads on the compression engagement; the compression engagement is provided by a nut rotatably supported on the threads of the bone exterior section; a compression shoulder adapted for mounting on a distal end of the exterior section of the shaft at a longitudinally adjustable position, the compression shoulder providing a contact surface which extends at an angle to the shaft axis: the compression shoulder being wider than the major diameter of the threads of the bone anchor section for making contact with an exterior surface of the fragment; adapted for mounting on the proximal threaded shaft section at an axially adjustable position; the shoulder being wider than the threads of the bone anchor section for making contact with an exterior surface of the fragment; adapted for mounting on the fragment exterior section; the compression engagement having internal threads for mating with the external threads of the fragment exterior section enabling the compression engagement to be axially movable on the fragment exterior section; the method further comprising: moving the compression engagement axially on the elongated shaft to position the compression engagement in an axial position to make substantial contact with an exterior surface of the bone fragment when the bone anchor section advanced to a final position; advancing a compression engagement disposed on a fragment exterior section proximal to the anchor section relative to the shaft. The bone exterior section has threads of a shallower pitch than the threads of the bone anchor section. The inside

diameter of the internal threads on the compression engagement is smaller than the non-engaging fragment section such that the internal threads on the compression engagement cannot advance onto the non-engaging fragment section. The bone exterior section has threads of a different thread profile than the threads of the bone anchor section. a proximal threaded shaft section proximal to the anchor section, the proximal threaded shaft section having threads with a compression thread pitch, the compression thread pitch being different than the anchor thread pitch; the fragment exterior section having external threads with a fragment exterior major diameter and a fragment exterior minor diameter; wherein the fragment exterior major diameter is less than the anchor major diameter. Asnis et al. do disclose a compression engagement to provide a compressive force between two bone fragments (Fig. 13)(column 8, lines 4-8).

von Hoffmann et al. disclose a compression engagement being provided by a nut (Fig. 3A, near ref. 56) rotatably supported on the threads (Fig. 3A, ref. 42)(column 6, lines 65-68)(column 7, lines 1-10) of a bone exterior section (Fig. 7A, closer to ref. 48). ; the bone exterior section has external threads which mate with internal threads on the compression engagement (Fig. 3A, ref. 42)(column 6, lines 65-68)(column 7, lines 1-10); a compression shoulder adapted for mounting on a distal end of the exterior section of the shaft at a longitudinally adjustable position (Fig. 3A, near ref. 56), the compression shoulder providing a contact surface which extends at an angle to the shaft axis (Fig. 7A, near ref. 44); adapted for mounting on the fragment exterior section (Fig. 3A); the compression engagement having internal threads for mating with the external threads of the fragment exterior section enabling the compression engagement

to be axially movable on the fragment exterior section (Fig. 3A, ref. 42)(column 6, lines 65-68)(column 7, lines 1-10); the method further comprising: moving the compression engagement axially on the elongated shaft (Fig. 3A, ref. 42)(column 6, lines 65-68)(column 7, lines 1-10); advancing a compression engagement disposed on a fragment exterior section proximal to the anchor section relative to the shaft (Fig. 3A, ref. 42)(column 6, lines 65-68)(column 7, lines 1-10). The bone exterior section has threads of a shallower pitch than the threads of the bone anchor section (Fig. 3A). The inside diameter of the internal threads on the compression engagement is smaller than an adjacent portion of the device (Fig. 3A, near ref. 28) such that the internal threads on the compression engagement cannot advance onto the adjacent portion of the device (Fig. 3A, near ref. 28). The bone exterior section has threads of a different thread profile than the threads of the bone anchor section (Fig. 3A, near ref. 62 and near ref. 42). von Hoffmann et al. disclose the compression engagement being used to provide compression across a fracture (column 6, lines 39-49).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the fixed compression engagement of Asnis et al. in view of Evans with the mobile compression engagement of von Hoffman et al., in order to achieve the predictable result of providing compression between two bone fragments.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asnis et al. (US Pat. 4,450,835) in view of Evans (Pat. 5,122,133) in view of Kambin (US Pat. 5,242,443).

Asnis et al. in view of Evans disclose the claimed invention except for the device being provided in a kit of a plurality of such devices each having a different length of non-engaging fragment section.

Kambin discloses a kit of different threaded orthopedic fasteners (Fig. 9) that comprises fasteners having portions of different lengths (Fig. 9)(column 3, lines 59-66). This gives the surgeon a variety of sizes of devices to select from during the surgical procedure (column 3, lines 43-49).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have provided the device of Asnis et al. in view of Evans within a kit as taught by Kambin in order to allow the surgeon to have a variety of different sized devices with different portions of different lengths to select from during a surgical procedure (column 3, lines 43-49).

Claim 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asnis et al. (US Pat. 4,450,835) in view of Evans (Pat. 5,122,133) in view of Pierce (US Pat. 2,760,488).

Asnis et al. in view of Evans disclose the claimed invention except for cutting off a portion of the fragment exterior section.

Pierce discloses removing a portion of the device (column 2, lines 54-60) so that the device is contained entirely under the skin of the patient (column 2, lines 54-60).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have created the method of Asnis et al. in view of Evans with the step of removing a portion of a bone exterior section of the device as taught by Pierce so that the device is contained entirely under the skin of the patient (column 2, lines 54-60).

Claims 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asnis et al. (US Pat. 4,450,835) in view of Evans (Pat. 5,122,133) in view of von Hoffmann et al. (US Pat. 6,511,481 B2) in view of Huebner (US Pat. 6,030,162).

Asnis et al. in view of Evans in view of von Hoffmann disclose the claimed invention except for the fragment exterior minor diameter is less than the anchor minor diameter. The fragment exterior major diameter is no greater than a mean of the anchor major diameter and the anchor minor diameter. The fragment exterior major diameter is no greater than the anchor minor diameter. The anchor section having threads with a major diameter and a minor diameter. The non-engaging fragment section having a diameter which is no greater than the minor diameter of the anchor section such that the non-engaging fragment section can fit within a profile drilled by the anchor section. A fragment exterior major diameter and a fragment exterior minor diameter; wherein the fragment exterior major diameter is less than the anchor major diameter.

Huebner discloses a compression devices that has a varying diameter and varying thread diameters (Fig. 22), which aids in generating axial compression (column 4, lines 35-44).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have created the sections of Asnis et al. in view of Evans in view of von Hoffmann with varying diameters and thread diameters as taught by Heubner, in order to aid in generating axial compression (column 4, lines 35-44).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asnis et al. (US Pat. 4,450,835) in view of Evans (Pat. 5,122,133) in view of Magee et al. (US Pat. 5,957,927).

Asnis et al. in view of Evans discloses the claimed invention except for the advancing and screwing acts are performed without pre-drilling.

Magee et al. disclose a threaded fixation member that is self-drilling, in order to eliminate the need for predrilling (column 5, lines 38-41), which would decrease surgical time and complexity.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have created the method of Asnis et al. in view of Evans with the advancing and screwing acts being performed without pre-drilling as taught by Magee et al. in order to eliminate the need for predrilling (column 5, lines 38-41), which would decrease surgical time and complexity.

Claims 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asnis et al. (US Pat. 4,450,835) in view of Evans (Pat. 5,122,133) in view of von Hoffmann et al. (US Pat. 6,511,481 B2) in view of Pierce (US Pat. 2,760,488).

Asnis et al. in view of Evans in view of von Hoffmann et al. disclose the claimed invention except for

Pierce discloses removing a portion of the device (column 2, lines 54-60) so that the device is contained entirely under the skin of the patient (column 2, lines 54-60).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have created the method of Asnis et al. in view of Evans in view of Hoffman et al. with the step of removing a portion of a bone exterior section of the device as taught by Pierce so that the device is contained entirely under the skin of the patient (column 2, lines 54-60).

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lichty (US Pat. 4,456,005) in view of Pennig (US Pat. 5,709,687).

Lichty discloses the claimed invention except for a rotation section proximal to the compression engagement for rotating the anchor section, the rotation section having a smooth outer diameter; and using the smooth outer diameter of the rotation section to screw the device such that the bone anchor section advances into an anchor bone with the fragment section in the bone fragment and with the shoulder of the compression engagement abutting an exterior bone surface. Lichty does disclose using a wrench with the device in order to screw the device into a bone (column 2, line 68 and column

3, lines 1-4).

Pennig discloses a bone device (Fig. 1)(abstract) which comprises a smooth proximal section (Fig. 1, ref. 1).that is used with a rotary power tool with a chuck (column 8, lines 35-42), the smooth proximal section and the rotary power tool being used to screw the device into a bone (column 8, lines 35-52).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the wrench mechanism of Lichty with the smooth-walled proximal section of Pennig, in order to achieve the predictable result of screwing the device into a bone (column 8, lines 35-52).

Lichty in view of Pennig discloses the claimed invention except for the shoulder being at a diameter greater than the major diameter of the threads of the anchor section. It would have been an obvious matter of design choice to have constructed the shoulders as having a larger diameter than the threads of the anchor section, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Response to Arguments

With regard to the arguments directed to the changing the size of the compression engagement, the examiner respectfully disagrees that the change in size would not be obvious. As an initial point, Lichty may teach using less hardware as applicant has pointed out, but does not teach away from changing the sizes of the

component, including the compression engagement. While there may be less components being used above the surface of the skin, Lichty does not teach away from using larger compression engagements. Secondly, Lichty teaches that elements of the device may be altered in size depending on the particular surgical application (column 43-46). Furthermore, the size of the compression engagements is only referred to as a preferred size (column 2, lines 37-42) and not as being a required size. Thus, changing the size of the compression engagement is certainly not taught away from and would have been an obvious modification of the Lichty device.

With regard to Applicant's argument that there is no smooth outer profile taught by the combination of Lichty and Pennig, the examiner respectfully disagrees. Pennig teaches a smooth outer diameter (Fig. 1, ref. 1).

Applicant's arguments with respect to the remaining claims have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY CUMBERLEDGE whose telephone number is (571)272-2289. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. C./

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733